

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE CHARGE NO. 1-93

JAMES R. UGRIN, Member Local
#375, International Union of
Operating Engineers,

Complainant,

-vs-

OFFICERS & EXECUTIVE BOARD
MEMBERS OF LOCAL #375,
I.U.O.E.

Defendant.

INVESTIGATION REPORT
AND
RECOMMENDED ORDER

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I. INTRODUCTION

On July 6, 1992, James R. Ugrin, a member of Local No. 375, I.U.O.E. filed an unfair labor practice charge with this Board alleging that Stationary Engineers Local #375 breached its duty of fair representation by refusing to process a grievance to arbitration, thus restraining Mr. Ugrin in the exercise of his rights guaranteed under Sections 39-31-201, MCA, thereby constituting and Unfair Labor Practice as set forth in 39-31-402(1), MCA. The Defendant denied any violation of the above-cited laws.

An investigation was conducted which included contact with all parties involved. The alleged breach of the statutory duty of fair representation on the part of the union is the central issue of Mr. Ugrin's claim.

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2 II. DISCUSSION

3 The claim states in relevant part: "The E - Board as
4 represented at this meeting was illegally convened and constituted
5 and as a result the decisions at which they arrived were null and
6 void. ... Also the decision was based solely on advise by union
7 legal counsel which was totally erroneous and misleading. ... As
8 a result of knowingly and willingly basing a decision on false and
9 unreasonable advise, the Executive Board of Local 375 breached its
10 duty of fair representation."

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12 The U.S. Supreme Court in Vaca v. Sipes, 37 S.Ct.903, 917, 64
13 LRRM 2369 (1967) stated: "Though we accept the proposition that a
14 union may not arbitrarily ignore a meritorious grievance or process
15 it in perfunctory fashion, we do not agree that the individual
16 employee has an absolute right to have his grievance taken to
17 arbitration regardless of the provisions of the collective
18 bargaining agreement." The Court further stated that "A breach
19 of the statutory duty of fair representation occurs only when a
20 union's conduct toward a member of the collective bargaining unit
21 is arbitrary, discriminatory, or in bad faith." (37 S.Ct. at 916).

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23 The composition of the Executive Board has no direct bearing
24 in this case since the purpose served was advisory. The final
25 authority to decide whether or not to pursue the grievance to

1 arbitration resided with Union Business Manager Charles Davies.
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4 The argument that the advice received from the union legal
5 counsel was erroneous and misleading is not compelling. It was
6 found in Harris v. Schwerman Trucking Co., 109 LRRM 3532, 3534-3535
7 (CA 9, 1981) that neither negligence on the part of the union nor
8 a mistake in judgment is sufficient to support a claim that the
9 union acted in an arbitrary and perfunctory manner - "(n)othing
10 less than a demonstration that the union acted with reckless
11 disregard for the employee's rights or was grossly deficient in its
12 conduct will suffice to establish such a claim". Similarly in
13 Hoffman v. Lanza, Inc., 108 LRRM 2311, 2314 (CA 7, 1981), required
14 "substantial evidence of fraud, deceitful action or dishonest
15 conduct" to establish a breach of the duty of fair representation.
16 The record also shows that the union had earlier represented Mr.
17 Ugrin on a separate grievance and reached a settlement with the
18 employer regarding his employment in his current position.
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20 The allegations made by the Complainant and the denials set
21 forth by the Defendant do not raise sufficient factual and legal
22 issues to warrant a finding of probable merit and referral to an
23 evidentiary hearing.
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III. RECOMMENDED ORDER

Accordingly, pursuant to section 39-31-405(2) MCA, it is recommended that this complaint be dismissed.

DATED this 8th day of December, 1992.

BOARD OF PERSONNEL APPEALS

By:



Paul Melvin
Investigator

NOTICE

ARM 24.26.680B (4) provides: As provided for in 39-31-405 (2), MCA, if after the investigation, the agent designated by the board determines that the charge is without probable merit the board shall issue and cause to be served upon the complaining party and the person being charged notice of its intention to dismiss the complaint. The dismissal becomes a final order of the board unless either party requests a review of the decision to dismiss the complaint. This rule requires that the request for review must clearly set forth the specific factual and/or legal reasons indicating how the investigator's finding of no probable merit is in error. The written answer shall be filed within ten (10) days with the Investigator at P. O. Box 1728, Helena, MT 59624.

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CERTIFICATE OF MAILING

I, , do hereby certify that a true and correct copy of this document was mailed to the following on the 7th day of December, 1992.

James Ugrin
833 Emmett St.
Butte, MT 59701

Charles Davies, Business Manager
Silver Bow Stationary Engineers Local #375, I.U.O.E.
58 West Quartz
Butte, MT 59701